

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 510

INTRODUCER: Senators Hooper and Polsky

SUBJECT: State Funds

DATE: February 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 510 exempts the State Housing Trust Fund and the Local Government Housing Trust Fund from a provision authorizing the Legislature, in the General Appropriations Act, to transfer unappropriated cash balances from specified trust funds to the Budget Stabilization Fund and General Revenue Fund.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Florida Housing Finance Corporation

The 1997 Legislature created the Florida Housing Finance Corporation (FHFC) as a public private entity to replace the Florida Housing Finance Agency, with the purpose of reducing bureaucracy and streamlining administrative processes.¹ The FHFC is now a public corporation that is housed within the Department of Economic Opportunity.² The goal of the FHFC is to increase the supply of safe, affordable housing for individuals and families with very low to moderate incomes. To do this, the FHFC uses federal and state resources to finance the development of affordable homes and rental housing and assist first-time homebuyers through various programs.³ The FHFC tries to increase affordable housing opportunities and ensure that its programs are well matched to the needs of those it serves, while working with local governments, nonprofits, elected officials, and others to help spread the importance of affordable housing in Florida's communities.

¹ Chapter 97-167, Laws of Fla.

² Section 420.504(1), F.S.

³ Further information on the FHFC's Multifamily Development, Special Programs, and Homeownership programs is available at <https://www.floridahousing.org/about-florida-housing> (last visited January 29, 2020).

The FHFC receives funding for its affordable housing programs from documentary stamp tax revenues which are distributed to the State Housing Trust Fund and the Local Government Housing Trust Fund.⁴ Pursuant to s. 420.507, F.S., the FHFC is also authorized to receive federal funding in connection with the corporation's programs directly from the Federal Government.⁵

Documentary Stamp Tax

The documentary stamp tax imposes an excise tax on deeds or other documents that convey an interest in Florida real property. The Department of Revenue classifies the documentary stamp taxes as two taxes imposed on different bases at different tax rates.⁶ The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interest that are granted, assigned, transferred, conveyed or vested in a purchaser.⁷ The second tax rate is 35 cents per each \$100 of consideration for certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements.⁸

Section 201.15, F.S., provides for the distribution of documentary stamp taxes, which are primarily used to fund various land and water conservation, preservation, and maintenance trust funds and certain transportation trust funds.⁹ In 1992, the William E. Sadowski Act created a dedicated source of revenue from documentary stamp tax revenues for affordable housing. This was generated from:

- Additional revenues from a 10-cent increase in the documentary stamp tax rate imposed on real estate transfers; and
- A re-allocation of ten cents of the existing documentary stamp tax revenues from general revenue to the affordable housing trust funds beginning in FY 1995-96.¹⁰

According to the FHFC, “30 percent of these revenues flow into the State Housing Trust Fund and 70 percent flow into the Local Government Housing Trust Fund.”¹¹ In 2005, the Legislature capped the rate of growth for distribution of documentary stamp tax revenues into these trust funds to \$243 million per year.¹² This cap was repealed in 2011. In the 2020-2021 fiscal year, the Legislature appropriated \$370.25 million (\$225 million of which was vetoed by the Governor) to the FHFC.¹³

⁴ Section 201.15, F.S.

⁵ See ss. 420.507(33) and 159.608, F.S.

⁶ Florida Revenue Estimating Conference, *2019 Florida Tax Handbook*, at 74 (2019) available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited January 29, 2020).

⁷ *Id.* See also s. 201.02(1), F.S.

⁸ *Id.*

⁹ Section 201.15, F.S.

¹⁰ Florida Housing Finance Corporation, *Affordable Housing Act* available at http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/SadowskiAct_Outline.pdf (last visited January 29, 2020).

¹¹ *Id.*, see also s. 201.15, F.S.

¹² Senate Bill 1110 (2005).

¹³ Chapter 2020-111, s. 6 Laws of Fla.

The following chart describes the yearly funds collected and funds appropriated:

Historical Financial Summary of Florida's State and Local Government Housing Trust Funds¹⁴

Year	Total Housing Trust Funds			
	Collections	Appropriations	Legislative Sweep	Cap Sweep / SEED
1992 / 1993	41,006,550	36,200,000	-	-
1993 / 1994	51,033,448	47,000,000	-	-
1994 / 1995	45,536,407	50,666,438	-	-
1995 / 1996	108,049,916	112,916,468	-	-
1996 / 1997	121,471,040	127,369,767	-	-
1997 / 1998	145,209,025	121,033,630	-	-
1998 / 1999	169,882,688	169,389,410	-	-
1999 / 2000	176,464,510	186,576,276	-	-
2000 / 2001	191,415,135	186,671,276	-	-
2001 / 2002	228,117,990	195,521,212	12,000,000	-
2002 / 2003	294,552,125	246,600,168	-	-
2003 / 2004	390,167,300	192,171,717	120,896,937	-
2004 / 2005	502,045,358	192,892,623	220,800,000	-
2005 / 2006	606,244,598	442,892,623	-	-
2006 / 2007	452,308,119	433,000,000	-	-
2007 / 2008	^A 243,000,000	390,400,000	-	46,506,007
2008 / 2009	^B 167,581,340	69,304,577	440,000,000	-
2009 / 2010	159,088,774	31,279,989	91,900,000	-
2010 / 2011	170,713,220	37,500,000	174,310,000	-
2011 / 2012	186,756,959	-	189,531,109	-
2012 / 2013	^C 168,122,265	10,000,000	96,660,000	75,000,000
2013 / 2014	^C 193,073,850	-	204,130,000	75,000,000
2014 / 2015	^C 238,951,609	167,660,000	106,151,367	75,000,000
2015 / 2016	^C 262,033,614	175,000,000	81,000,000	75,000,000
2016 / 2017	^{C, D} 282,850,943	184,330,428	116,914,438	75,000,000
2017 / 2018	^C 296,912,132	137,000,000	154,400,000	75,000,000
2018 / 2019	^C 318,003,831	123,605,000	182,000,000	75,000,000
2019 / 2020	^C 351,308,269	192,600,000	125,000,000	75,000,000
2020 / 2021	^{C, E, F} 361,000,000	115,000,000	-	75,000,000
Totals	6,922,901,016	4,374,581,602	2,315,693,851	721,506,007

Notes:

^A The 2005 Legislature adopted a cap restricting the amount of revenue that could flow into the trust funds to \$243 million/year, with a mechanism for a small increase over time. Collections in excess of the cap amount were swept to general revenue. The cap went into effect in 2007 and was repealed in 2011. Collections shown are funds deposited into the trust funds; they do not include the amounts swept to General Revenue.

^B As a result of the economic recession, the Legislature held a special session in early 2009, adopting SB 2A to address the state budget shortfall. Appropriations are net of SB 2A reductions & collections a shortfall in collections. The \$190 million payback of prior appropriations required by SB 2A is included as a reduction of Appropriations and as an increase in Leg. Sweep.

^C The State Economic Enhancement and Development (SEED) Trust Fund was created in 2011, with funds transferred to it beginning with FY 12/13. SEED funding may be used for infrastructure, job creation, affordable housing in accordance with chapter 420, economic development incentives for job creation and capital investment; and other purposes. The amounts in the Cap Sweep / SEED column represent doc stamp amounts deposited to SEED that would have otherwise been deposited to the housing trust funds.

^D Deposits to the trust funds were less than the full appropriation amount. The appropriation amount on this chart has been reduced to reflect this shortfall in available funds.

^E Collections amount is the August 2019 Revenue Estimating Conference estimate.

^F SHIP appropriation of \$225 million was vetoed by the Governor. These funds remain in the Local Government Housing Trust Fund and have not been swept.

¹⁴ Email from the Florida Housing and Finance Corporation, *Collections Appropriations & Sweeps Summary*, (January 22, 2021). On file with the Senate Committee on Community Affairs.

The Legislature's Authority to Transfer Unappropriated Trust Fund Balances

Section 215.32(2)(b)4.a., F.S., specifically grants authority to the Legislature to transfer unappropriated cash balances of state trust funds to either the General Revenue Fund or the Budget Stabilization Fund in the General Appropriations Act. The Budget Stabilization Fund is required by the State Constitution and must be maintained at not less than 5 percent of the previous year's General Revenue collections.¹⁵ Moneys in the fund may only be used to cover revenue shortfalls in the General Revenue Fund and for emergencies as defined in s. 252.34, F.S.¹⁶

Currently, the funds listed below are exempt from the trust fund transfer provision in s. 215.32, F.S.:

- Trust funds required by federal programs or mandates;
- Trust funds established for bond covenants, indentures, or resolutions whose revenues are legally pledged by the state or public body to meet debt service or other financial requirements of any debt obligations of the state or any public body;
- The Division of Licensing Trust Fund in the Department of Agriculture and Consumer Services;
- The State Transportation Trust Fund;
- The trust fund containing the net annual proceeds from the Florida Education Lotteries;
- The Florida Retirement System Trust Fund;
- Trust funds under the management of the State Board of Education or the Board of Governors of the State University System, where such trust funds are for auxiliary enterprises, self-insurance, contracts, grants, and donations, as those terms are defined by general law;
- Trust funds that serve as clearing funds or accounts for the Chief Financial Officer or state agencies;
- Trust funds that account for assets held by the state in a trustee capacity as an agent or fiduciary for individuals, private organizations, or other governmental units; and
- Other trust funds authorized by the State Constitution.¹⁷

It should be noted that the Legislature may not bind a future Legislature by prohibiting statutory law changes.¹⁸ In the past, the Legislature has passed legislation that transferred funds from trust funds listed in s. 215.32, F.S., to the General Revenue Fund or the Budget Stabilization Fund as part of the state budget process.

III. Effect of Proposed Changes:

The bill amends s. 215.32, F.S., to add the State Housing Trust Fund and the Local Government Housing Trust Fund to the exemptions from a provision authorizing the Legislature, in the General Appropriations Act, to transfer unappropriated cash balances from specified trust funds to the Budget Stabilization Fund and General Revenue Fund.

¹⁵ Section 215.32(2)(c)1., F.S.

¹⁶ Section 216.222, F.S.

¹⁷ Section 215.32(2)(b)4.b., F.S.

¹⁸ *Neu v. Miami Herald Pub. Co.*, 462 So.2d 821 (Fla. 1985).

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Entities that build, construct or finance affordable housing in the state may see an increase in funding since the State Housing Trust Fund and the Local Government Housing Trust Fund could no longer have funds transferred to the Budget Stabilization Fund and the General Revenue Fund.

C. Government Sector Impact:

The state would have less flexibility in available funding since the State Housing Trust Fund and the Local Government Housing Trust Fund could no longer have funds transferred to the Budget Stabilization Fund and the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.32

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
